

REMARKS

Applicants have studied the Office Action mailed August 31, 2005 and have made amendments to the claims. It is respectfully submitted that the application, as amended, is in condition for allowance. Reconsideration and allowance of the pending claims in view of the above amendments and following remarks is respectfully requested.

Rejection of claims 4, 8-9, 24, and 27-29 under 35 USC §102(b):

The Examiner rejected claims 4, 8-9, 24, and 27-29 under 35 USC §102(b) as being anticipated by Takino et al. (WO 98/42835) because Takino et al. teach a nucleotide sequence encoding the entirety of or a portion of the amino acid sequence represented by SEQ ID NO:3 (US 6,255,472, which is the English equivalent of WO 98/42835) and SEQ ID NO:3 is 99.0% identical to SEQ ID NO:2 of the instant application. The Examiner states that the phrase "...amino acid sequence comprising SEQ ID NO:2..." in claims 4(a) and 24 reads on any polypeptides having SEQ ID NO:2, including polypeptides having additional amino acids contained within/at the beginning/at the end of the amino acid sequence.

Compared with SEQ ID NO:2 of the instant application, SEQ ID NO:3 of Takino's US 6,255,472 contains an insertion of 26 additional amino acids residues (YVMTRNWRV GALQRL LQFGIVVYVVG) between residues 19 and 20 of SEQ ID NO:2 of the instant application. Thus, SEQ ID NO:3 of Takino et al., compared to SEQ ID NO:2 of the instant application, contains an insertion that is located within the corresponding amino acid sequence of instant SEQ ID NO:2.

Applicants respectfully assert that the phrase "...amino acid sequence comprising SEQ ID NO:2..." in claims 4(a) and 24 reads on polypeptides having SEQ ID NO:2, including polypeptides having additional amino acids at the beginning or at the end of the amino acid sequence of SEQ ID NO:2, but the phrase does not read polypeptides having additional amino acids within SEQ ID NO:2.

However, for clarity, Applicants have hereby amended claims 4(a) and 24 for clarity to recite the phrase "...an amino acid sequence comprising the contiguous amino acid sequence of SEQ ID NO:2". This phrase clarifies that SEQ ID NO:2 must be contiguous, and therefore an amino acid sequences having additional amino acids inserted within SEQ ID NO:2 is not a contiguous amino

acid sequence of SEQ ID NO:2 and therefore polypeptides having such a non-contiguous amino acid sequence of SEQ ID NO:2 (such as SEQ ID NO:3 of Takino et al.) are not encompassed by instant claims 4(a) and 24.

Therefore, Applicant respectfully request that the Examiner reconsider and withdraw the rejection of claims 4, 8-9, 24, and 27-29 under 35 USC §102(b).

Rejection of claims 4, 8, and 28 under 35 USC §103(a):

The Examiner rejected claims 4, 8, and 28 under 35 USC §103(a) as being unpatentable over Takino et al. (WO 98/42835) taken with Bard et al. (US 5,714,381). Takino et al. teach a nucleotide sequence encoding the entirety of or a portion of the amino acid sequence represented by SEQ ID NO:3 (US 6,255,472, which is the English equivalent of WO 98/42835) and SEQ ID NO:3 is 99.0% identical to SEQ ID NO:2 of the instant application. Takino et al. teach a vector (plasmid) comprising the nucleotide sequence, however, Takino et al. do not specifically teach a virus (e.g., bacteriophage) comprising the nucleotide sequence. However, at the time the invention was made, Bard et al. teach inserting a nucleotide sequence into a virus such as bacteriophage, and Bard further teaches that nucleic acid sequences are inserted into vectors by methods well known to those of ordinary skill in the art. The Examiner asserts that it would have been *prima facie* obvious to a person of ordinary skill in the art at the time the invention was made to combine the teaching of Takino taken with Bard, namely to produce a virus (bacteriophage) comprising the nucleotide sequence.

Based on the above discussion in response to the rejection under 35 USC §102(b) and the amendment to claim 4(a), it is clear that Takino et al. does not render obvious the subject matter of instant claims 4, 8, and 28, even in view of Bard et al. For one thing, neither Takino et al. nor Bard et al. teach or suggest a polypeptide having an amino acid sequence comprising the contiguous amino acid sequence of SEQ ID NO:2.

Therefore, Applicant respectfully request that the Examiner reconsider and withdraw the rejection of claims 4, 8, and 28 under 35 USC §103(a).

Conclusions

Claims 4 and 24 are hereby amended. As such, claims 4, 8-9, and 24-29 remain pending.

The Examiner indicated that claims 25 and 26 are in condition for allowance.

In view of the above amendments and remarks, Applicants respectfully submit that the application and claims are in condition for allowance, and request that the Examiner reconsider and withdraw the rejections. If for any reason the Examiner finds the application other than in condition for allowance, the Examiner is invited to call the undersigned agent at (240) 453-3812 should the Examiner believe a telephone interview would advance prosecution of the application.

Respectfully submitted,

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